



## COMPLIANCE ASSISTANCE PROGRAM

### Odor

#### It is our Responsibility to Know

##### Is that a nuisance or just an odor?

That question is one that must be answered frequently by the enforcement staff of the YRCAA.

Let's try using the logical approach. Go to the dictionary. Webster defines **nuisance** as "anything that causes vexation or annoyance", **odor or scent** as, "that which affects the sense of smell" and **annoy** as, "to vex or trouble by repeated acts". The dilemma seems easily solved when approached with the logic of definition. So, any odor that troubles me repeatedly is, by definition, a nuisance. Right? Not necessarily.

Most of us agree that odors such as sewage, rotting vegetables and burning rubber are annoying and should be considered nuisances when they persist or are repeated. Our logic of definition, however, seems to fail when individual sensitivities and opinions are added into the equation.

Let's try some other examples. What about the smell of a bakery? You know, the aroma of freshly baked bread wafting past your nose. Far from annoying, right? How about day after day, permeating your clothing, furniture and the entire interior of your home? Maybe just a little annoying. How about the smell of roasting coffee beans? Not so bad when you walk past the espresso stand on your way to work each morning. But, what if you lived a block away from the factory that processes the coffee beans? Some people hate the smell of coffee and the smell of roasting coffee beans can get a little thick.

Let's talk about dairies. Some people actually enjoy the 'barnyard smell'. It reminds them of days gone by, visits to the country, a simpler time. Most of us, however are saying to ourselves, "dairies really stink!" Let's try another one. How about the smell of freshly mixed asphalt? You know – that pungent, tarry smell, laced with just enough solvent to give you a headache. Let's face it – some odors are a nuisance, plain and simple.

##### When does an odor become a public nuisance and when does it lose the "nuisance" label?

If you have simple and correct answers to these questions, you truly are the wisest of wise. Here's the definitive (but not simple) answers: An odor is a public nuisance if it "**unreasonably interferes**" with the use or enjoyment of property, unless of course it's part of an agricultural activity, in which case it's okay as long as the activity constitutes a "**good agricultural practice**" and there's no "**substantial adverse effect**" on public health. When does it lose the label, "**public nuisance**" – when it goes completely away? Not necessarily. If it's not agricultural but it still interferes, as previously stated, then you must use recognized "**good practice**" to reduce it to a "**reasonable minimum**". Everybody clear on that? Good! Now all we need is for everybody to agree on what is reasonable, unreasonable, substantial and good.



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It may seem strange, but the above is a fairly accurate paraphrase of the law. The law is vague, but it's vague for a very good reason. When it comes to odors, nuisance is in the nose of the beholder. One person's nuisance may be another person's aroma.

Considerable discretion must be exercised by YRCAA staff in order to do justice to all sides. Can you imagine being cited for creating a public nuisance because someone didn't like the fragrance of the perfume you wore today? It's terms like substantial, reasonable and good which protect you from such prescriptive uses of the nuisance law.

On the other hand, if you conduct an activity which continually emits an obnoxious odor and makes your neighbors absolutely miserable, you may be cited and be required to reduce the odor to a reasonable minimum through good practice.

The same subjective language which protects the perfume wearer can make it difficult to establish beyond a reasonable doubt that a far more obnoxious and far reaching odor constitutes a public nuisance.

### ODOR RATING SCALE

In an effort to quantify the intensity of a particular odor, YRCAA staff may use the following scale to attach a numeric value, (which corresponds to the appropriate description) to the odor. Nuisance odors with a value of 3 or greater, if persistent or repetitive are generally considered unreasonable and thus, a public nuisance.

- 0 - No detectable odor;
- 1 - Odor barely detectable;
- 2 - Odor distinct and definite, unpleasant characteristics recognizable;
- 3 - Odor strong enough to cause attempts at avoidance;
- 4 - Odor overpowering, intolerable for any appreciable amount of time.

### Where are the laws found regarding Odor in Washington State?

#### Statute:

Revised Code of Washington (RCW)

RCW 70.94.640 - Exemptions for Agricultural Odors

RCW 70.94.645 - Ammonia emissions from use as agricultural or silvicultural fertilizer -- Regulation prohibited.



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### **Regulations:**

Washington Administrative Code (WAC)

WAC 173-350-100 - Definitions

WAC 173-400-040 - General standards for maximum emissions

WAC 173-425-040 - Areas where certain types of outdoor burning are prohibited

YRCAA Regulation 1:

Sec. 3.03D1(13) - Prohibition against burning materials which emit obnoxious odors

### **THE STINKING QUESTION:**

#### **HOW CAN I OBTAIN MORE INFORMATION ABOUT WHAT CAN BE DONE ABOUT ODORS?**

Further information about odors in residential and other settings may be obtained by calling or writing:

Yakima Regional Clean Air Agency

186 Iron Horse Court

Suite 101

Yakima, WA 98901-2303

Information: 834-2050

Toll Free Hot Line: 1-800-540-6950

For information regarding odors on property located within the external boundaries of the Yakama Indian Reservation, call: 509-865-5121 Ext. 6038